IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Supreme Court, U. S.
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No. 75-6527

JAMES INGRAHAM, by his mother and next friend, ELOISE INGRAHAM, and ROOSEVELT ANDREWS, by his father and next friend, WILLIE EVERETT,

Petitioners,

v.

WILLIE J. WRIGHT, I; LEMMIE DELIFORD; SOLOMON BARNES; EDWARD L. WHIGHAM; and THE DADE COUNTY SCHOOL BOARD,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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I.

DECISIONS BY LOWER FEDERAL COURTS SUPPORT THE CONCLUSION THAT THE EIGHTH AMENDMENT IS NOT LIMITED TO PUNISHMENT IMPOSED FOR CRIMINAL OFFENSES.

The petitioners limit this Reply Brief to one point: the narrow interpretation of the cruel and unusual punishment clause of the Eighth Amendment advanced by the respondents. Both respondents and *amici curiae* supporting the respondents' position view the clause as being limited to punishment imposed for criminal offenses.

If that reasoning were adopted, it would threaten the integrity of a host of decisions which have applied the Eighth Amendment to persons in custody on non-criminal matters who are not being "punished." See, *Knecht v. Gillman*, 488 F.2d 1136 (8th Cir. 1973) (mental institution inmates); *Vann v. Scott*, 467 F.2d 1235 (7th Cir. 1972) (runaway children in state training schools); *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972) ("wayward", non-criminal, boys in state training school); *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972); (children in need of supervision as a result of non-criminal problems confined in juvenile detention centers).

Under the respondents' theory, the Eighth Amendment might also be inapplicable to pre-trial detainees who are not held in jails for punishment, but reside there because they are unable to make bail. See, *Jones v. Wittenberg*, 323 F. Supp. 93 and 330 F. Supp. 707 (N.D. Ohio 1971); *Collins v. Schoonfield*, 344 F. Supp. 257 and 363 F. Supp. 1152 (D. Md. 1972 and 1973)

and *Johnson v. Lark*, 365 F. Supp. 289 (E.D. Mo. 1973); decisions which applied the protection of the cruel and unusual clause to presumptively innocent pre-trial detainees.

We recognize that the instant case, unlike those cited above, involves no detention. But we bring these cases to the Court's attention to buttress our argument that the cruel and unusual punishment clause has evolved since its adoption and is not limited to punishment imposed by the criminal justice processes.

Respectfully submitted,

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